

# U.S. NUCLEAR REGULATORY COMMISSION

## DIRECTIVE TRANSMITTAL

TN: DT-93-09

To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 5.1,  
"Intergovernmental Consultation"

Purpose: Directive and Handbook 5.1 replace Manual Chapter and Appendix 0401 and were revised to make changes to the Objectives and Organizational Responsibilities and Delegations of Authority sections as a result of a reorganization and Commission direction. Changes were also made that result in coordination with other program offices in a more specific manner and as a result of new policies approved by the Commission.

Office and  
Division of Origin: Office of State Programs

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# Intergovernmental Consultation

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## Directive

(Formerly  
MC 0401)

5.1

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# U. S. Nuclear Regulatory Commission

Volume: 5 Governmental Relations and Public Affairs OSP

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## Intergovernmental Consultation\* Directive 5.1

### Policy (5.1-01)

It is the policy of the U.S. Nuclear Regulatory Commission to ensure appropriate consultation at the earliest possible stage between NRC and States, local governments, other Federal agencies, and Indian Tribe Organizations,\*\* and their national and regional associations regarding major interagency agreements, major organizational changes, major rules and regulations, statements of policy, guides, and standards, and major studies that may have a significant State or local impact. Except where indicated, all objectives apply to Agreement States as well as non-Agreement States.

### Objectives (5.1-02)

- To ensure that major interagency agreements, major organizational changes, major rules and regulations, statements of policy, guides and standards, and major studies developed by NRC that significantly impact the States and Federal agencies are prepared with appropriate and

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\*Consultation with State officials and Federal agencies on individual licensing and enforcement decisions is not included or covered by this directive.

\*\*Reference throughout to "State" or "States" includes State and local governments and Indian Tribes, and national and regional organizations of States, local governments, and Indian Tribes.

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Directive 5.1

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## Objectives

(5.1-02) (continued)

meaningful consultation with these entities and their national and regional associations at the earliest possible stage. (021)

- To achieve a better understanding within NRC of the interests, and the regional variations of the interests, of the States and of the interests of relevant Federal agencies. (022)
- To achieve a better understanding on the part of States and Federal agencies and their national and regional associations of NRC's policies and procedures. (023)
- To ensure early and substantial involvement of the Agreement States in rulemakings and other NRC regulatory efforts (COMKC-91-007). (024)
- To identify and develop Commission policy to implement this directive more effectively. (025)

## Organizational Responsibilities and Delegations of Authority

(5.1-03)

The Commission  
(031)

Approves policy matters related to NRC's program of cooperation with States.

Executive Director for Operations (EDO)  
(032)

Notifies State and local government associations and the Office of Management and Budget (OMB) of the designation of the Director, Office of State Programs, as the NRC official responsible for State coordination.

## Organizational Responsibilities and Delegations of Authority

(5.1-03) (continued)

### Director, Office of State Programs (OSP) (033)

- Maintains a close working relationship with elected and appointed officials so that the NRC can better understand State and local interests and concerns and States can be informed of NRC's activities and policies. (a)
- Coordinates any recommendations for proposed policies with States at the Commission level, through the EDO, so that the Commission may approve such policies. (b)
- Assists office directors in determining the appropriate means, level, and timing of actions involving the States and their associations. See Section (034)(b) of this directive. (c)
- Assists NRC offices with consultation and program development and conducts liaison with the States and their national and regional associations. See Section (034)(g) of this directive. (d)
- Distributes draft items according to the plan contained in Section (034)(e) of this directive or arranges for final distribution. See Section (034)(h) of this directive. (e)
- Plans, schedules, and sponsors workshops with State, local, and Tribal officials on behalf of NRC, or assists other offices in planning these activities. (f)
- Arranges meetings to resolve major differences when requested by State officials or NRC program offices. (g)
- Coordinates liaison with other Federal agencies through the Federal Liaison Program. (h)

## Organizational Responsibilities and Delegations of Authority

(5.1-03) (continued)

### Office Directors and Regional Administrators (034)

- Identify those activities within individual offices that may be of significant interest to or that may impact any State. (a)
- Review with the Director, OSP, the appropriate means, level, and timing of involvement of the States and their associations. Samples of activities that require consultation with a State or an Indian Tribe, and therefore coordination by OSP, are—(b)
  - Proposed rulemakings or policy issues in which States play even a small role (i)
  - Issues that require input from a State agency or the Governor (ii)
  - Issues that impact several States or Indian Tribes, including but not limited to low-level waste, high-level waste, transportation, emergency preparedness, and generic reactor issues such as plant life extension, license renewal, storage of spent fuel, and decommissioning. (iii)
- A number of alternative arrangements for consultation include but are not limited to, the following: (c)
  - Letters to Governors or State agencies inviting comments and expressions of interest. (i)
  - Invitations to States or their national or regional organizations to establish committees to work with NRC on a specific program. (ii)

## Organizational Responsibilities and Delegations of Authority

(5.1-03) (continued)

### Office Directors and Regional Administrators

(034) (continued)

- Workshops of State officials under NRC sponsorship. (iii)
- Inform OSP Federal Liaison of consultation and coordination activities with other Federal agencies on significant policy issues, for example, when issues are elevated to senior levels at other agencies, when NRC objectives cut across organizational structures at other agencies, or when there is a delay or impasse. (d)
- Inform OSP Federal Liaison, who serves as the NRC's National Environmental Policy Act (NEPA) liaison with the Council on Environmental Quality (CEQ), of NEPA interactions with the CEQ. (e)
- Consult with OSP on the nature and significance of the items and on the timing and scope of proposed distribution when this review results in a plan to circulate items for comment to State and local governments or their associations. In general, an opportunity for early input is provided to all States to respond to significant programs, plans for rulemaking, or specific regulations. (f)
- Issues or documents that should be coordinated with OSP by copies of correspondence, concurrence, or verbal notice include but are not limited to—(g)
  - Information on State legislation or State legislative hearings (i)



## Organizational Responsibilities and Delegations of Authority

(5.1-03) (continued)

### Office Directors and Regional Administrators

(034) (continued)

- Any correspondence from State officials or members of State agencies (ii)
- Meetings with State officials or State and Indian organizations (iii)
- With regard to proposed regulations or supporting actions, review with OSP a specific plan for consultation and solicitation of comments from the States. This includes review by the States of proposed programs, plans for rulemaking, proposed regulations, and draft regulatory impact analyses before publication of proposed rules in the *Federal Register*. If the office declines to accept major changes in proposed regulations suggested by the States, OSP will be notified in writing. Promulgation of the proposed regulation may be delayed briefly to allow for further discussion and, if necessary, meetings between interested parties. This action must be discretionary in cases involving individual States. (h)
- When an item has been provided in draft for comment, consult with OSP regarding distribution arrangements for the document in its final form. (i)
- As soon as feasible, notify OSP of issues that require consultation with a State or coordination by OSP. (j)

## Applicability

(5.1-04)

## Employees

(041)

This directive and handbook apply to and must be followed by all NRC headquarters and regional employees who are responsible for and participate in intergovernmental consultation.

## Handbook

(5.1-05)

Handbook 5.1 contains some of the authorities that require NRC to ensure appropriate consultation and coordination with States in the implementation of its mission.

## References

(5.1-06)

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Nuclear Waste Policy Act of 1982, as amended (Public Law 97-425).

# Intergovernmental Consultation

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## Handbook

(Formerly  
Appendix 0401)

5.1

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2 Section 117(a) of The Nuclear Waste Policy Act of 1982, as Amended (Public Law 97-425) .....	4

## Purpose of This Handbook

This handbook contains examples of some of the authorities that require the U.S. Nuclear Regulatory Commission to ensure appropriate consultation and coordination with States in the implementation of its mission. These examples are simply portions of some of the authorities that exist; they are not all-inclusive.

**Exhibit 1** - Exhibit 1 is an excerpt from the Atomic Energy Act of 1954, as amended, which sets forth NRC's program of cooperation with States.

**Exhibit 2** - Exhibit 2 is an excerpt from the Nuclear Waste Policy Act of 1982, as amended, which sets forth the Federal Government's policy for consultation with the States during the process of siting a high-level waste repository in a State.

## Exhibit 1

### Section 274 of The Atomic Energy Act of 1954, as Amended (Public Law 83-703)

Cooperation  
with States.  
42 USC sec. 2021.

“Sec. 274. Cooperation With States.<sup>208</sup>—

“a. It is the purpose of this section—

“(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

“(2) to recognize the need, and establish programs for cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

“(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

“(4) to establish procedures and criteria for discontinuance of certain of the Commission’s regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

“(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

“(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

Agreements  
with States.

“b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

“(1) byproduct materials as defined in section 11e. (1);<sup>209</sup>

“(2) byproduct materials as defined in section 11e. (2);<sup>210</sup>

“(3) source materials;

“(4) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

“c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

“(1) the construction and operation of any production or utilization facility;

“(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

“(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

“(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or

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<sup>208</sup>Public Law 86-373 (73 Stat. 688) (1959), sec. 1, added sec. 274.

<sup>209</sup>Public Law 95-604 (92 Stat. 3036) (1978), sec. 204(a), amended sec. 274(b)(1) by adding “as defined in section 11e. (1)” after the words “byproduct materials”.

<sup>210</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(a), renumbered paragraphs (2) and (3) as paragraphs (3) and (4), and added a new paragraph (2).

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Handbook 5.1 Exhibits**

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**Exhibit 1 (continued)**

- 42 USC 2014.
- Conditions.
- potential hazards thereof, not be so disposed of without a license from the Commission. The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11e. (2).<sup>211</sup> Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.
- “d. The Commission shall enter into an agreement under subsection b. of this section with any State if—
- “(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and
- “(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects<sup>212</sup> compatible with the Commission’s program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.
- . . .
- Licensing requirements.  
Exemptions.
- “g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.
- . . .
- Inspections.
- “i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any such State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State’s entering into an agreement with the Commission pursuant to subsection b.

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<sup>211</sup>Public Law 95-604 (92 Stat. 3038) (1978), sec. 204(f), added a new sentence after paragraph (4).

<sup>212</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 904(b), amended sec. 274(d)(2) by inserting the words “in accordance with the requirements of subsection o, and in all other respects” before the word “compatible”.

**Exhibit 2**

**Section 117(a) of  
The Nuclear Waste Policy Act of 1982, as Amended  
(Public Law 97-425)**

**CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES**

42 USC 10137.

Sec. 117. (a) Provision Of Information.—(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.